

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)

BARRY G. PIERCE, M.D.)

File No. Case No.12-2001-117073

Physician's and Surgeon's)
Certificate No. G 50471)

Respondent)
_____)

DECISION

The attached **Stipulated Settlement and Disciplinary Order** is hereby adopted as the Decision and Order of the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 24, 2002.

IT IS SO ORDERED April 24, 2002.

MEDICAL BOARD OF CALIFORNIA

By: Rudy Bermúdez
Rudy Bermúdez,
Chair
Panel B
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN K. MEADOWS, State Bar No. 115092
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5552
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 BARRY G. PIERCE, M.D.
1260 N. Dutton Avenue, Suite 175
Santa Rosa CA 95403

14 Physician's and Surgeon's Certificate
No. G50471

15 Respondent.

Case No. 12-2001-117073

OAH No. N2001 110101

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Ron Joseph (Complainant) is the Executive Director of the Medical Board
21 of California. He brought this action solely in his official capacity and is represented in this
22 matter by Bill Lockyer, Attorney General of the State of California, by Susan K. Meadows,
23 Deputy Attorney General.

24 2. Respondent Barry G. Pierce, M.D. (Respondent) is represented in this
25 proceeding by attorney Kenneth L. Freeman, whose address is 711 Van Ness Avenue, Suite 240,
26 San Francisco, CA 94102.

27 3. On or about July 1, 1983, the Medical Board of California issued
28 Physician's and Surgeon's Certificate No. G50471 to Barry G. Pierce, M.D. (Respondent). The

1 license was in full force and effect at all times relevant to the charges brought in Accusation No.
2 12-2001-117073 and will expire on September 30, 2002, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 12-2001-117073 was filed before the Division of Medical
5 Quality (Division), Medical Board of California, Department of Consumer Affairs, and is
6 currently pending against Respondent. The Accusation and all other statutorily required
7 documents were properly served on Respondent on October 4, 2001. Respondent timely filed his
8 Notice of Defense contesting the Accusation. A copy of Accusation No. 12-2001-117073 is
9 attached as exhibit A and incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 12-2001-117073. Respondent has
13 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated
14 Settlement and Disciplinary Order.

15 6. Respondent is fully aware of his legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
17 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
18 the right to present evidence and to testify on his own behalf; the right to the issuance of
19 subpoenas to compel the attendance of witnesses and the production of documents; the right to
20 reconsideration and court review of an adverse decision; and all other rights accorded by the
21 California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 8. For the purpose of resolving the Accusation No. 12-2001 117073 without
25 the expense and uncertainty of further proceedings, respondent agrees that, at a hearing,
26 complainant could establish a factual basis for the charges in the Accusation under Business and
27 Professions Code section 2234, and that respondent hereby gives up his right to contest those
28 charges.

9. Respondent agrees that the Division has jurisdiction to enter the following order pursuant to section 2234 of the Business and Professions Code as set forth in the Order below.

10. The admissions and agreements made by respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Division of Medical Quality, Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceedings.

11. Respondent agrees that his Physician's and Surgeon's Certificate no. G50471 is subject to discipline and he agrees to be bound by the Division's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Division of Medical Quality. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Division regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Division considers and acts upon it. If the Division fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Division shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Division may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 evaluation report to the Division or its designee. The respondent shall pay the cost of the
2 psychiatric evaluation.

3 If respondent is required by the Division or its designee to undergo psychiatric
4 treatment, respondent shall within thirty (30) days of the requirement notice submit to the
5 Division for its prior approval the name and qualifications of a psychiatrist of respondent's
6 choice. Respondent shall undergo and continue psychiatric treatment until further notice from
7 the Division or its designee. Respondent shall have the treating psychiatrist submit quarterly
8 status reports to the Division or its designee indicating whether the respondent is capable of
9 practicing medicine safely.

10 If the evaluation or the treating psychiatrist's report determines that respondent is
11 not mentally fit to practice medicine safely, then respondent shall be suspended from the practice
12 of medicine until a repeat evaluation establishes that he can practice safely, as evidenced by
13 written notice to respondent from the Division or its designee.

14 4. **PSYCHOTHERAPY** Within sixty (60) days of the effective date of this
15 decision, respondent shall submit to the Division or its designee for its prior approval the name
16 and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall
17 undergo and continue in regular treatment, at least two sessions per month, for the first five years
18 of probation. Respondent shall have the treating psychotherapist submit quarterly status reports
19 to the Division or its designee. The Division or its designee may require respondent to undergo
20 psychiatric evaluations by a Division-appointed psychiatrist. If, prior to the termination of
21 probation, respondent is found not to be mentally fit to resume the practice of medicine without
22 restrictions, the Division shall retain continuing jurisdiction over the respondent's license and the
23 period of probation shall be extended until the Division determines that the respondent is
24 mentally fit to resume the practice of medicine without restrictions. The respondent shall pay the
25 cost of the therapy and evaluations.

26 5. **PROHIBITED PRACTICE**

27 During the first three years of probation, respondent is prohibited from treating or
28 evaluating female patients. At the earliest opportunity, respondent shall inform his female

1 patients that he will be unable to continue to treat or evaluate them. Respondent shall have six
2 months after the effective date of the Decision in which to terminate and transition the treatment
3 of his current female patients.

4 6. **OBEY ALL LAWS** Respondent shall obey all federal, state and local
5 laws, all rules governing the practice of medicine in California, and remain in full compliance
6 with any court ordered criminal probation, payments and other orders.

7 7. **QUARTERLY REPORTS** Respondent shall submit quarterly
8 declarations under penalty of perjury on forms provided by the Division, stating whether there
9 has been compliance with all the conditions of probation.

10 8. **PROBATION SURVEILLANCE PROGRAM COMPLIANCE**
11 Respondent shall comply with the Division's probation surveillance program. Respondent shall,
12 at all times, keep the Division informed of his business and residence addresses which shall both
13 serve as addresses of record. Changes of such addresses shall be immediately communicated in
14 writing to the Division. Under no circumstances shall a post office box serve as an address of
15 record, except as allowed by Business and Professions Code section 2021(b).

16 Respondent shall, at all times, maintain a current and renewed physician's and
17 surgeon's license.

18 Respondent shall also immediately inform the Division, in writing, of any travel
19 to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more
20 than thirty (30) days.

21 9. **INTERVIEW WITH THE DIVISION, ITS DESIGNEE OR ITS**
22 **DESIGNATED PHYSICIAN(S)** Respondent shall appear in person for interviews with the
23 Division, its designee or its designated physician(s) upon request at various intervals and with
24 reasonable notice.

25 10. **TOLLING FOR OUT-OF-STATE PRACTICE, RESIDENCE OR**
26 **IN-STATE NON-PRACTICE** In the event respondent should leave California to reside or to
27 practice outside the State or for any reason should respondent stop practicing medicine in
28 California, respondent shall notify the Division or its designee in writing within ten (10) days of

1 the dates of departure and return or the dates of non-practice within California. Non-practice is
2 defined as any period of time exceeding thirty (30) days in which respondent is not engaging in
3 any activities defined in Sections 2051 and 2052 of the Business and Professions Code. All time
4 spent in an intensive training program approved by the Division or its designee shall be
5 considered as time spent in the practice of medicine. A Board-ordered suspension of practice
6 shall not be considered as a period of non-practice. Periods of temporary or permanent residence
7 or practice outside California or of non-practice within California, as defined in this condition,
8 will not apply to the reduction of the probationary order.

9 11. **COMPLETION OF PROBATION** Upon successful completion of
10 probation, respondent's certificate shall be fully restored.

11 12. **VIOLATION OF PROBATION** If respondent violates probation in any
12 respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke
13 probation and carry out the disciplinary order that was stayed. If an accusation or petition to
14 revoke probation is filed against respondent during probation, the Division shall have continuing
15 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
16 is final.

17 13. **COST RECOVERY** The respondent is hereby ordered to reimburse the
18 Division the amount of \$4,000.00. Respondent shall pay the Division \$1000.00 dollars of
19 this amount within ninety (90) days of the effective date of this decision for its investigative and
20 prosecution costs. Thereafter, respondent shall pay the Division \$500.00 per month until the
21 full amount of the \$4000.00 cost recovery is paid in full. The full amount of cost recovery shall
22 be paid within the first year of probation. Failure to reimburse the Division's cost of
23 investigation and prosecution as set forth above shall constitute a violation of the probation
24 order. The filing of bankruptcy by the respondent shall not relieve the respondent of his
25 responsibility to reimburse the Division for its investigative and prosecution costs.

26 14. **PROBATION COSTS** Respondent shall pay the costs associated with
27 probation monitoring each and every year of probation, as designated by the Division, which are
28 currently set at \$2,488 per year, but may be adjusted on an annual basis. Such costs shall be

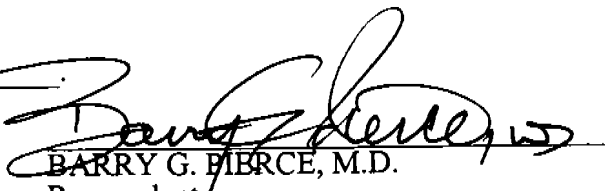
1 payable to the Division of Medical Quality and delivered to the designated probation surveillance
2 monitor no later than January 31 of each calendar year. Failure to pay costs within 30 days of the
3 due date shall constitute a violation of probation.

4 15. **LICENSE SURRENDER** Following the effective date of this decision,
5 if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
6 the terms and conditions of probation, respondent may voluntarily tender his certificate to the
7 Board. The Division reserves the right to evaluate the respondent's request and to exercise its
8 discretion whether to grant the request, or to take any other action deemed appropriate and
9 reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent
10 will no longer be subject to the terms and conditions of probation.

11 **ACCEPTANCE**

12 I have carefully read the above Stipulated Settlement and Disciplinary Order and
13 have fully discussed it with my attorney, Kenneth L. Freeman. I understand the stipulation and
14 the effect it will have on my Physician's and Surgeon's Certificate no. G50471. I enter into this
15 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
16 to be bound by the Decision and Order of the Division of Medical Quality, Medical Board of
17 California.

18 DATED: 1/9/02

19 
20 BARRY G. PIERCE, M.D.
Respondent

21 I have read and fully discussed with Respondent Barry G. Pierce, M.D. the terms
22 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
23 Order. I approve its form and content.

24 DATED: 1/11/02

25 
26 KENNETH L. FREEMAN
27 Attorney for Respondent
28

1 **ENDORSEMENT**

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Division of Medical Quality, Medical Board of California of
4 the Department of Consumer Affairs.

5
6 DATED: 1/16/02

7 BILL LOCKYER, Attorney General
8 of the State of California

9 
10 SUSAN K. MEADOWS
11 Deputy Attorney General

12 Attorneys for Complainant
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Exhibit A

Accusation No. 12-2001-117073

1 BILL LOCKYER, Attorney General
of the State of California
2 VIVIEN HARA HERSH
Supervising Deputy Attorney General
3 SUSAN K. MEADOWS (#115092)
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, California 94102
Telephone: (415) 703-5552
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *October 4 2001*
BY: *M. Asan* ANALYST

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 **In the Matter of the Accusation Against:**

Case No. 12 2001 117073

12 **Barry G. Pierce, M.D.**

1260 ~~Sutton Avenue~~ #175 *N. Dutton Avenue, Suite*
13 Santa Rosa, CA 95403 *175*
(address of record)

ACCUSATION

14 **Physician's & Surgeon's License No. G50471**

15 **Respondent.**
16 _____

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18 The Complainant alleges:

19 **PARTIES**

20 1. Complainant, Ron Joseph, is the Executive Officer of the Medical Board
21 of California (hereinafter the "Board") and brings this accusation solely in his official capacity.

22 2. On or about July 1, 1983, License No. G 50471 was issued by the Board to
23 Barry G. Pierce, M.D. (hereinafter "respondent"). Respondent's license, if not renewed, will
24 expire on September 30, 2002. No prior disciplinary action has been taken against respondent's
25 license by the Board.

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JURISDICTION

3. Section 2001 of the Business and Professions Code provides for the existence of the Board.

4. Section 2003 of the Business and Professions Code provides for the existence of the Division of Medical Quality (hereinafter referred to as the "Division") within the Board.

5. Section 2004 of the Business and Professions Code provides, inter alia, that the Division is responsible for the administration and hearing of disciplinary actions involving enforcement of the Medical Practice Act (section 2000 *et seq.* of the Code) and the carrying out of disciplinary action appropriate to findings made by a Medical Quality Review Committee, the Division, or an Administrative Law Judge.

6. Section 2229 of the Business and Professions Code provides, in pertinent part, that protection of the public shall be the highest priority of the Division in exercising its disciplinary authority.

7. Section 2234 of the Business and Professions Code provides that the Division shall take action against a holder of a physician and surgeon's certificate who is guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(b) Gross Negligence.

8. Section 726 provides, in pertinent part, that:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division. . . ."

9. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his license revoked, be suspended for a period not to exceed one year, be placed on probation and required to pay the costs of probation monitoring, be publicly reprimanded, or have such other action taken in relation to discipline as the Division deems proper.

10. Section 14124.12 of the Welfare and Institutions Code states:

1 "(a) Upon receipt of written notice from the Medical Board of California, the
2 Osteopathic Medical Board of California, or the Board of Dental Examiners of California,
3 that a licensee's license has been placed on probation as a result of a disciplinary action,
4 the department may not reimburse any Medi-Cal claim for the type of surgical service or
5 invasive procedure that gave rise to the probation, including any dental surgery or
6 invasive procedure, that was performed by the licensee on or after the effective date of
7 probation and conditions or until the probationary period has ended, whichever occurs
8 first. This section shall apply except in any case in which the relevant licensing board
9 determines that compelling circumstances warrant the continued reimbursement during
10 the probationary period of any Medi-Cal claim, including any claim for dental services, as
11 so described. In such a case, the department shall continue to reimburse the licensee for
12 all procedures, except for those invasive or surgical procedures for which the licensee
13 was placed on probation.

14 "(b) The Medical Board of California, the Osteopathic Medical Board of
15 California, and the Board of Dental Examiners of California, shall work in conjunction
16 with the State Department of Health Services to provide all information that is necessary
17 to implement this section. These boards and the department shall annually report to the
18 Legislature by no later than March 1 that number of licensees of these boards, placed on
19 probation during the immediately preceding calendar year, who are:

20 "(1) Not receiving Medi-Cal reimbursement for certain surgical services
21 or invasive procedures, including dental surgeries or invasive procedures, as a
22 result of subdivision (a).

23 "(2) Continuing to receive Medi-Cal reimbursement for certain surgical or
24 invasive procedures, including dental surgeries or invasive procedures, as a result
25 of a determination of compelling circumstances made in accordance with
26 subdivision (a).

1 "(c) This section shall become inoperative on July 1, 2003, and, as of January 1,
2 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004,
3 deletes or extends the dates on which it becomes inoperative and is repealed."

4 11. Section 125.3 provides, in pertinent part, that in any order issued in
5 resolution of a disciplinary proceeding before any board within the California Department of
6 Consumer Affairs, the Board may request the administrative law judge to direct a licensee found
7 to have committed a violation/violations of the licensing act to pay a sum not to exceed the
8 reasonable costs of the investigation and enforcement of the case.

9 12. This case was initiated on or about January 1, 2001 when the Medical Board
10 received a referral from the Santa Rosa Police Department pertaining to a complaint by a patient,
11 G.D., who alleged that she and respondent had engaged in a sexual relationship while she was his
12 patient. The incidents described below occurred while respondent was practicing as a psychiatrist
13 in Santa Rosa, California.

14 **FIRST CAUSE FOR DISCIPLINARY ACTION**

15 (G.D.^{1/})

16 (Sexual Misconduct)

17 13. On or about April of 1998, patient G.D., a 36-year-old female, sought
18 psychiatric treatment from respondent. G.D. was in therapy with respondent from April of 1998
19 until February of 1999.

20 14. On or about December of 1998 during a scheduled therapy session at
21 respondent's office, G.D. told respondent that she was moving out of the area. During the
22 session, respondent suggested that they continue to conduct therapy sessions by telephone. At the
23 end of that therapy session, respondent and G.D. hugged and kissed. Respondent slipped his
24 hand through the slide slit in G.D.'s overalls and placed his hand on her bare buttocks and left it
25 there.

26 1. In order to protect the privacy of the patient, the names of the patient will be revealed to
27 respondent through the discovery process.

1 15. In or about mid-December, G.D. moved and called respondent weekly for
2 their hourly telephone therapy sessions. On or about February 3rd or 4th, 1999, G.D. told
3 respondent that she would be in the Santa Rosa area and scheduled an appointment with
4 respondent. They decided to meet at the Sonoma Mission Inn where G.D. was spending the
5 night. Respondent met her at the hotel and they went out to dinner. During dinner, they had wine
6 and discussed their lives. After dinner, respondent and G.D. went back to her hotel room and
7 engaged in sexual relations. After this date, respondent continued to telephone G.D. stating that
8 he wanted to see her. In a letter to G.D. dated May 28, 1999, respondent told G.D. that he was
9 "wrong, and misguided and deluded to tell [her] that he had feelings for [her]". G.D. and
10 respondent began dating each other and G.D. moved into respondent's house on or about
11 February or March of 2000.

12 16. Respondent's conduct as set forth above constitutes sexual misconduct
13 pursuant to section 726 in that respondent engaged in sexual misconduct with G.D. when he
14 kissed her and placed his hand inside her overalls to hold her buttocks. Respondent's conduct of
15 engaging in sexual relations with G.D. in February of 1999 while G.D. was his patient further
16 constitutes sexual misconduct in violation of section 726. Therefore, cause for disciplinary action
17 exists.

18 SECOND CAUSE FOR DISCIPLINARY ACTION

19 (Gross Negligence)

20 (Patient G.D.)

21 17. The allegations contained in paragraphs 13 through 16, inclusive, are
22 incorporated herein as if fully set forth.

23 18. Respondent's conduct as set forth in paragraph 17 above constitutes gross
24 negligence and is cause for disciplinary action pursuant to section 2234(b) in that respondent, in
25 pursuit of his own personal gratification, destroyed the therapeutic relationship with G.D. and
26 betrayed the professional trust G.D. had placed in him as her therapist by engaging in a romantic
27 and sexual relationship with her. Respondent failed to evaluate or consider the actual and/or

1 potential emotional and psychological harm that his actions would have on this patient. Therefore,
2 cause for disciplinary action exists pursuant to section 2234(b), and section 2234 of the Code.

3 **PRAYER**

4 WHEREFORE, the complainant requests that a hearing be held on the matters
5 herein alleged, and that following the hearing, the Board issue a decision:

6 1. Revoking or suspending License Number G 50471 heretofore issued to
7 respondent Barry G. Pierce, M.D.;


8 2. Ordering respondent to pay the Board the actual and reasonable costs of
9 the investigation and enforcement of this case;

10 3. If probation is included in any order issued herein, to order respondent to
11 pay the costs as provided by section 2227(a)(3);

12 4. Revoking respondent's ability to supervise physician assistants; and

13 5. Taking such other and further action as the Board deems necessary and
14 proper.

15 DATED: October 4, 2001

16 
17 _____
18 RON JOSEPH
19 Executive Director
20 Medical Board of California
21 Department of Consumer Affairs
22 State of California
23 Complainant

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25
26
27
Pierce.acc